

**DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

WATERGATE FITNESS CENTER and
CARLO DELLA MEA
Respondents

Case No.: I-00-30137

FINAL ORDER

I. Introduction

On August 21, 2000, the Government served a Notice of Infraction upon Respondents Watergate Fitness Center and Carlo Della Mea alleging that they had violated D.C. Code § 47-2824 by operating a swimming pool without a license. The Notice of Infraction alleged that the violation occurred on August 11, 2000 at 2650 Virginia Avenue, N.W., and sought a fine of \$500.00

Respondents did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code § 6-2715). Accordingly, on September 26, 2000, this administrative court issued an order finding Respondents in default and assessing the statutory penalty of \$500.00 required by D.C.

Code § 6-2704(a)(2)(A). On November 8, 2000, Respondents filed an untimely plea of Deny to the Notice of Infraction and requested an evidentiary hearing. This administrative court then scheduled a hearing for December 6, 2000.

All parties appeared for the hearing. Olga Clegg, Esq. represented the Government, and Respondent Carlo Della Mea appeared on his own behalf and on behalf of Respondent Watergate Fitness Center. Based upon the testimony at the hearing, and my evaluation of the credibility of the witnesses, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondent Watergate Fitness Center operated a swimming pool at the Watergate Hotel (the “Watergate Pool”) on August 11, 2000. The Watergate Pool is located at 2650 Virginia Avenue, N.W. in the District of Columbia. Respondent Carlo Della Mea was the manager of the pool on that date.

Maria Hille, an inspector employed by the Department of Health, visited the Watergate pool on August 11 to conduct a routine inspection to determine its compliance with District of Columbia regulations. At that time, she noticed several violations of those regulations, and gave the pool’s operators 24 hours to correct them. At the start of her inspection, Ms. Hille asked to see the pool’s license, but the employees on duty were unable to locate it. At some point during

Ms. Hille's visit, Mr. Della Mea came upon the scene and was informed by the workers that Ms. Hille had asked to see the license. Mr. Della Mea did not know the location of the pool's license, if any, and he and other employees searched for it without success. Mr. Della Mea also telephoned the former manager of the pool, but was informed that she was on vacation.

At the conclusion of her inspection, Ms. Hille told the pool's employees that they had 24 hours to correct various violations that she had found. With respect to the license, Ms. Hille intended the 24-hour deadline to be the time within which the facility needed to locate any license that already was in effect. After Ms. Hille's departure, the facility's staff continued to search for a license, but did not locate one.

Because Ms. Hille's inspection took place on a Friday, she did not return to the Watergate Pool until Monday, August 14. At that time, all the violations that she had identified had been corrected, except the licensing violation. Unable to locate a license, Mr. Della Mea decided to submit an application for a new license on the morning of August 14. He did so, and obtained a license from the District of Columbia Department of Consumer and Regulatory Affairs that same day (License No. 30018732). Mr. Della Mea, however, did not return to the Watergate Pool with the license until after Ms. Hille's follow-up visit on August 14.

Although evidence that the Government had searched the licensing records and had found no record of a current license for the Watergate Pool would have strengthened its case, no such

evidence was offered. Nevertheless, for several reasons the record is sufficient to demonstrate, by a preponderance of the evidence, that there was no current license for the Watergate Pool on August 11, 2000. Respondents could not locate a license on that day, despite a thorough search. Moreover, the law requires that all licenses granted pursuant to the General License Law, including licenses for the operation of swimming pools, must be conspicuously posted on the licensee's premises. D.C. Code § 47-2806. It is unlikely that Respondents would have obtained a valid license and then would have put in a place unknown to any of the employees who operate the pool, particularly in the face of a statutory requirement that it be posted. Finally, Respondents had almost four months to prepare for the hearing and to search for the license. Their failure to produce it to support their denial of the infraction further indicates that no such license existed. I find, therefore, that no valid license to operate the Watergate Pool was in effect on August 11, 2000.

Respondents also presented evidence of the reason for their failure to file a timely response to the Notice of Infraction. Mr. Della Mea testified that he did not believe that a written response was necessary, but that it was sufficient for him to show up on the pre-scheduled hearing date of November 1, 2000. I need not decide whether Respondents actually held such a belief. If they did, their belief was unreasonable, in light of the clear instructions on the Notice of Infraction, which state: "Failure to respond . . . to this Notice within 15 days of the date of service will result in the assessment of a penalty equal and in addition to the amount of the fine."

III. Conclusions of Law

The General License Law requires owners or managers of swimming pools to obtain a license and to pay an annual license fee of \$319.00 per year. D.C. Code § 47-2824. Section 2824(a) requires payment of the annual fee, and §2824(b) provides that a license “issued pursuant to this section” must be issued as a Class A Public Health: Public Accommodations endorsement to the master business license required by D.C. Code § 47-2851.2. The civil fine schedule prescribes a fine of \$500.00 for a first violation of § 47-2824, and describes the violation as “operating a swimming pool without a license.” 16 DCMR 3214.1(u). It is apparent, therefore, that an owner or manager of a swimming pool who does not pay the annual licensing fee when due, and consequently does not obtain a valid license, is subject to the prescribed civil penalty.

Although there is no evidence concerning the ownership of the Watergate Pool, the undisputed evidence establishes that Respondent Watergate Fitness Center operated that pool on August 11, and that Mr. Della Mea was employed by Watergate Fitness Center to manage the pool on its behalf. This is sufficient to conclude that both Watergate Fitness Center and Mr. Della Mea were “managers” of the pool within the meaning of D.C. Code § 47-2824 on August 11. Because the facility did not have a license on that date, they are liable for the civil fine prescribed by 16 DCMR 3214.1(u).

Respondents' prompt efforts to correct both the licensing violation and the other violations discovered during Ms. Hille's August 11 inspection justify a reduction in the \$500.00 fine for the violation. Respondents obtained a valid license on the next business day after the inspection, and all other violations had been abated when Ms. Hille visited the facility on August 14. Accordingly, I will reduce the fine to \$425.00.

Respondents' stated basis for not filing a timely response to the Notice of Infraction is unreasonable and, therefore, does not satisfy the good cause requirement of D.C. Code § 6-2712(f). Therefore, no suspension or reduction of the separate \$500.00 penalty imposed by this administrative court's order of September 26, 2000 is authorized, and Respondents remain liable for the full amount of that penalty as required by D.C. Code §§ 6-2704(a)(2)(A) and 6-2712(f).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2000:

ORDERED, that Respondents shall cause to be remitted a single payment totaling **NINE HUNDRED TWENTY-FIVE DOLLARS (\$925.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure

to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' license or permit pursuant to D.C. Code § 6-2713(f).

FILED **12/14/00**

John P. Dean
Administrative Judge